

REMARKS

This amendment is being filed in response to the Office Action dated September 11, 2006. In that Office Action, claims 1-42 were rejected on prior art grounds. Claims 1, 12, 19, 23, and 30 are being amended and these amendments are fully supported by the specification as originally filed. Accordingly, claims 1-42 remain pending in the application.

Claims 1, 2, 6, 7, 10-14, 18, 21, 23, 24, 29, 30, and 33 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Jacobi. Claims 1, 9, 12, 19, and 23-25 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Luburic. Claims 3, 15, and 34 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Jacobi in view of Bouc. Claims 4, 5, 16, 17, 27-29, 31, and 32 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Jacobi. Claims 8, 22, 35, 36, and 38 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Jacobi in view of Stolzenfeld. Claims 19, 20, 25, and 26 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Jacobi in view of Wildfeuer. And claim 37 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Jacobi in view of Stolzenfeld and Bouc. These rejections are traversed for the reasons discussed below.

Claims 1, 2, 6, 7, 10-14, 18, 21, 23, 24, 29, 30, and 33

Jacobi discloses a vent closure having inner and outer cylindrical walls joined by a radially-extending unitary portion that is not described or otherwise mentioned in the description. Rather, it is illustrated in Fig. 3. In the Office Action, this unitary portion extending between the cylindrical walls is identified as a fusible link. Applicant respectfully submits that this is wrong. Nowhere in Jacobi is this portion of the closure even mentioned, much less that it is a fusible link. Nor is there any teaching in Jacobi of structural features (material and/or dimensions) by which this would necessarily operate as a fusible link.

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). See MPEP §2131. Although not stated by the Examiner, given that Jacobi makes absolutely no mention of the portion identified by the Examiner as a fusible link,

it is apparent that the Examiner has determined that Jacobi inherently discloses the fusible link recited in claim 1. However, this determination is wrong. As stated by MPEP § 2112, the fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic. In re Rijckaert, 9 F.3d 1531, 1534, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993) (reversed rejection because inherency was based on what would result due to optimization of conditions, not what was necessarily present in the prior art); In re Oelrich, 666 F.2d 578, 581-82, 212 USPQ 323, 326 (CCPA 1981). "To establish inherency, the extrinsic evidence 'must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.' " In re Robertson, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999) (citations omitted).

The Examiner's rejection fails to meet these requirements for inherency. As can be seen by following the reasoning of the latter Federal Circuit case noted above, "the mere fact that" the unitary portion interconnecting the inner and outer walls of Jacobi's closure may act as a fusible link in "a given set of circumstances is not sufficient" to establish inherency. Applicant's specification makes it clear that certain material and/or dimensional constraints are necessary to form a fusible link. None of these constraints are disclosed or necessarily present in Jacobi's closure. Rather, his drawings show that the outer threaded portion of the unitary closure member 95 has a smaller thickness than that of the portion interconnecting the portions 95 and 97. Thus, it would appear that the threaded closure member 95 would melt through its thickness first. Moreover, the container itself has a thinner plastic wall than that of the interconnecting portion of the closure and so, depending upon such things as selected materials, the container might also melt prior to the interconnecting portion. Thus, Jacobi not only does not expressly disclose a fusible link as recited in claim 1, it does not inherently disclose it either.

To clarify the distinction between Applicant's fusible link and the disclosed closure of Jacobi, claim 1 has been amended to specify that "said fusible link is adapted to melt and rupture under conditions of elevated temperature and pressure while said first and second walls remain intact, whereby gaseous pressure in the tank can be vented via

said vent passage." Thus, in addition to that discussed above, Jacobi nowhere discloses this feature, either expressly or inherently. To the contrary, it is apparent that Jacobi's first wall would be likely to melt prior to the portion interconnecting Jacobi's first and second walls.

Claim 12 also recites a fusible link and so is not anticipated by Jacobi, as discussed above. Further, claim 12, as amended, recites that "said fusible link is dimensioned relative to said walls such that, at lower temperatures said fusible link prevents the escape of gases through said vent passage and, at one or more higher temperatures said fusible link melts while said walls remain intact, thereby permitting the gases to escape through said vent passage." There is no such disclosure of this in Jacobi, either expressly or inherently.

Claim 23 recites a venting fuse that is unitary with the bung body and that is located radially inwardly of a sealing ring. The claim further recites "said venting fuse being dimensioned such that it melts prior to the remainder of the body in response to ambient temperature exceeding the venting fuse's melting temperature." Jacobi nowhere discloses a venting fuse much less one having the construction and positional relationship recited in this claim. In this regard, the Examiner states in paragraph 8 of the Office Action that Jacobi does not disclose the claimed sealing ring. Thus, this claim is not anticipated.

Claim 30 recites a "unitary body having a thin walled section of fusible material radially-bounded on opposite sides by thicker inner and outer cylindrical wall sections of said material, said thin walled section of fusible material comprising a fuse having a thickness and having a width that is greater than said thickness." Jacobi does not disclose a fuse, much less one formed from a thin walled section of fusible material. Even assuming the plastic material illustrated in Jacobi's Fig. 3 is fusible, it is not a thin-walled section (it is thicker than the outer threaded wall) and is not disclosed as comprising a fuse, nor does it inherently operate as one. Thus, claim 30 is not anticipated by Jacobi.

Dependent claims 2, 6, 7, 10, 11, 13, 14, 18, 21, 24, 29, and 33 each ultimately depend from one of the independent claims 1, 12, 23, and 30 discussed above and should be allowed therewith.

Claims 1, 9, 12, 19, and 23-25

Luburic is not directed to a bung, but to a drainage opening for a container, wherein the opening is sealed with a tearstrip formed by a weakened tearline. As with Jacobi, Luburic nowhere makes even a remote mention of a fusible link that melts to provide venting of the container, and there is nothing either explicit or inherent in Luburic that constitutes this claimed fusible link. Although Luburic's tearline defines a point of smaller wall thickness, it is not necessarily true that this weakened point melts prior to other portions of the container lid. It may be likely, but that is not enough for inherency. For example, with reference to Fig. 12 noted by the Examiner, the lid has a reduced wall thickness at the gasket 120 and it may be true that the combination of temperature with upward pressure on this wall section by the gasket could result in it rupturing before melting of the tearstrip at the tearline.

Thus, the limitations quoted above from claims 1, 12, and 23 are not disclosed in Luburic, either expressly or inherently. Furthermore, claim 12, as amended, recites that the first and second walls are cylindrical. Luburic does not disclose the tearstrip extending circumferentially all the way around the lid and thus does not disclose this feature of claim 12. Accordingly, claims 1, 12, and 23, as well as dependent claims 9, 19, 24, and 25, are not anticipated by Luburic.

Section 103(a) Rejections

With regard to the rejection of dependent claims 4, 5, 16, 17, 27-29, 31, and 32 as being unpatentable over Jacobi, Applicant respectfully submits that neither these claims, nor the independent claims themselves are rendered obvious by Jacobi. To the contrary, Jacobi is not only entirely silent on the concept of providing a fusible link or fuse on the closure, but also makes absolutely no mention of the portion interconnecting the closure portions 95 and 97. Thus, it would not have been obvious to provide that portion with the dimensions and other features recited in these dependent claims. Without the benefit of Applicant's specification, one of ordinary skill in the art would have no reason to modify that unmentioned section of Jacobi's closure in the manner needed to come within these claims. Furthermore, the case citation noted by the Examiner does not support the position taken in the Office Action since that quoted statement from the case is premised on the "general conditions of a claim" being disclosed. The general teaching of a fusible

link that melts at elevated temperature is not disclosed in Jacobi and so the dimensional constraints used to implement the fusible link are not obvious in view of Jacobi.

The secondary references (Bouc, Stolzenfeld, and Wildfeuer) are all cited by the Examiner for their teachings of particular features of various dependent claims. However, none of these references make up for the deficiencies of Jacobi. For example, Bouc's fusible vent is formed on the container lid itself and there is nothing in either of these references or the other prior art of record that would suggest to one of ordinary skill in the art that Jacobi's unmentioned portion interconnecting the closure portions 95 and 97 could be modified to implement a fusible vent. Accordingly, the independent and dependent claims all patentably define over the combination of Jacobi with these references.

With regard to independent claim 35 it recites, in combination:

- a cylindrical exterior wall extending axially and having a threaded portion located near an axial end of said exterior wall;
- a cylindrical interior wall spaced radially inwardly from said exterior wall;
- a cylindrical vent passage located between said interior and exterior walls;
- a venting fuse forming a third wall extending across said vent passage and interconnecting said first and second walls; and
- at least one safety vent comprising a radial opening in said threaded portion of said exterior wall.

As discussed above, Jacobi does not disclose a venting fuse, nor one in combination with a safety vent such as is disclosed in the prior Stolzenfeld patent. There is nothing in Jacobi or Stolzenfeld to suggest modifying Jacobi's structure to add a safety vent while ignoring other aspects of Stolzenfeld's teachings, such as the use of metal rather than plastic to make the bung. Thus, claim 35 is allowable, as well as claims 36-38 that each ultimately depend from claim 35.

With regard to claim 39, it recites, among other things, an annular venting fuse comprising a thin walled section of polymeric material which interconnects and is unitary with said interior and exterior walls. Again, this is nowhere disclosed or rendered obvious by Jacobi or the other prior art of record. Accordingly, claim 39 is allowable over the prior art. Claims 40-42 each depend from claim 39 and should be allowed therewith.

Conclusion

In view of the foregoing, Applicant respectfully submits that all claims are allowable over the prior art and reconsideration is therefore requested. The Examiner is invited to telephone the undersigned if doing so would advance prosecution of this case.

The Commissioner is hereby authorized to charge any fees or deficiencies, or credit any overpayment associated with this communication to Deposit Account No. 50-0852.

Respectfully submitted,

REISING, ETHINGTON, BARNES, KISSELLE, P.C.

/James D. Stevens/

James D. Stevens
Registration No. 35,691
P.O. Box 4390
Troy, Michigan 48099
(248) 689-3500

Date: **February 12, 2007**
JDS/dim